

**Town of Chatham**

**Conservation Restriction  
Program**



**Town Hall, Main Street  
Chatham, Massachusetts 02633**

**2004**

Whereas, the protection of the environment, including clean air, pure water resources, scenic areas, open space, natural habitat of fish, wildlife and plants, is a primary concern of the Town of Chatham; and

Whereas, the Town prepared an *Open Space and Recreation Plan* in 1985 to establish a strategy to protect the natural resources cited above (which strategy includes the preservation, through acquisition and/or regulatory strategies of unique and ecologically valuable land areas); to protect wildlife, fin fish and shellfish resources, to pursue a variety of land acquisition and protection strategies, including conservation restrictions, to promote greenbelts in Chatham by linkage of existing and potential conservation and recreation areas, and to encourage the offering of gifts of land from the private sector to assist in the procurement and protection of open space; and

Whereas, the Town approved a *Local Comprehensive Plan* in May 2003 to guide growth and protect resources and community character and which included a natural resources goal of protecting natural resources "by acquiring or securing development rights to land for conservation in keeping with the Regional Policy Plan's goal of protecting at least 50% of the remaining developable land in Chatham;"

Whereas, conservation restrictions pursuant to *Massachusetts General Laws, Chapter 184, Section 31 et seq.* are a proper means to implement appropriate objectives of the Open Space and Recreation Plan and encourage open space protection in the Pleasant Bay watershed; and

Whereas, the Board of Selectmen and the Conservation Commission must determine the extent to which a conservation restriction on a particular property will yield significant public benefits, such as protecting water resources, clean air, and views and vistas; preserving open space, forest lands, and natural habitat of fish, wildlife or plants; adding to existing contiguous restricted land, and providing scenic enjoyment, outdoor recreation and education of the public if land is open to the public (but a lack of public access will not necessarily be determinative of whether or not significant public benefit exists).

NOW, THEREFORE, the Board of Selectmen declares it to be a policy of the Town of Chatham to accept and/or approve permanent conservation restrictions that provide significant public benefits as enumerated above; and that conservation restrictions may be held by the Town of Chatham or state or federal agencies or qualified conservation organizations within the meaning of Section 170 of the Internal Revenue Code; and that conservation restrictions held by the Town will be controlled and enforced by the Conservation Commission; and that approval of the conservation restrictions by the Board of Selectmen as required by *Massachusetts General Laws, Chapter 184, Section 31 et seq.* shall be conclusive confirmation that the same yield significant public benefits of the type cited herein.

SO VOTED: June 1, 2004

BOARD OF SELECTMEN

Douglas Ann Bolman  
Donnell

Ronald E. Burdette  
Wilborah Connors

**CONSERVATION RESTRICTION PROCEDURES  
ACTION SCHEDULE**

<b>Action by Landowner</b>	<b>Action by Town of Chatham</b>
1. Owner seeks information on Conservation Restrictions	2. Conservation Commission or Town Assessor provides Owner with information packet.
3. In consultation with the proposed holder of the Conservation Restriction <sup>1</sup> owner prepares proposed Conservation Restriction and Application and sends it to Division of Conservation Services (DCS) for preliminary review and approval.	
4. If applicable, Owner secures subordination of any outstanding mortgage on property to be subject to Conservation Restriction from the holder of the mortgage.	
5. Upon receipt of preliminary DCS approval, Owner files Conservation Restriction and Application with Conservation Commission.	6. Within 30 days, Conservation Commission and/or Staff, evaluates size, location, and environmental value of land, conducts site visit and schedules a review of proposed Conservation Restriction at a Conservation Commission meeting. If the Town is to be the Grantee, within 60 days, Conservation Commission negotiates proposed Conservation Restriction with Owner and forwards proposed Conservation Restriction to Town Counsel for review before final approval.
7. Upon approval of Conservation Restriction by Conservation Commission <sup>2</sup> , Owner submits proposed Conservation Restriction and application to Board of Selectmen.	8. Selectmen schedule a meeting date to review the proposed Conservation Restriction, seeking input from the Assessors, Land Bank Committee, Community Preservation Committee or others as appropriate.
	9. Within 30 days (or sooner, if possible) of receipt of proposed Conservation Restriction and application, Selectmen will act on restriction.

<sup>1</sup> The holder of the Conservation Restriction may be the Town of Chatham through its Conservation Commission, Commonwealth of Massachusetts, United States, or other qualified conservation organization, such as Chatham Conservation Foundation, Inc., Massachusetts Audubon Society, Trustees of Reservations, etc

<sup>2</sup> If the Town of Chatham is the proposed grantee of the Conservation Restriction, the Conservation Commission will be required to sign the Conservation Restriction, in addition to giving the Selectmen its written recommendation.

<p><b>10.</b> Owner forwards signed Conservation Restriction, and executed Subordination Agreement (if applicable) to DCS for approval by Secretary of Environmental Affairs</p>	
<p><b>11.</b> Owner secures an appraisal of value of unrestricted property and of restricted property to establish income tax deduction, if claiming more than \$5,000 deduction on federal income tax (optional).</p>	
<p><b>12.</b> Final Conservation Restriction approved by Town and State is recorded at Barnstable County Registry of Deeds, at Owner's expense. Copy of recorded Conservation Restriction is sent to Conservation Commission and Assessors.</p>	
<p><b>13.</b> Owner deducts value of donated restriction on income tax form (optional).</p>	

**GUIDELINES FOR APPROVAL OF CONSERVATION RESTRICTIONS IN THE TOWN OF CHATHAM****1. GENERAL INFORMATION**

The following guidelines outline the procedures for placing Conservation Restrictions on land in the Town of Chatham, Massachusetts. These guidelines conform to the *General Laws, Chapter 184, Section 31-33*.

- A. A Conservation Restriction is defined as a property interest, which thereafter limits in perpetuity the future use of the land in order to retain it in its natural, scenic, or open condition, or in agricultural or forest use. It may also be referred to as a conservation easement, though the Town prefers the term "Conservation Restriction."
- B. There is no standard form for a Conservation Restriction, but the Massachusetts Division of Conservation Services has included a sample form in its handbook<sup>3</sup>. The guidelines serve as a model and are designed to make the process orderly and expedite filing.
- C. The Conservation Restriction is a legally enforceable agreement between the Owner and the Town or another eligible grantee, such as the Chatham Conservation Foundation, Inc. or the Massachusetts Audubon Society. The owner retains title to the land, and the public does not have a right of access to the land unless the Conservation Restriction grants such access.
- D. The owner has the right to use the restricted land as he or she wishes so long as the uses do not violate terms of the agreement. Penalties for violating the agreement will include injunctions and/or money damages.

**2. BENEFITS TO THE TOWN**

Permanent Conservation Restrictions benefit the Town and its citizens and the citizens of the Commonwealth by providing various types of protection to the land. These benefits (for example, the furtherance of Town policies regarding open space plans, recreation, etc.) should be detailed in the Conservation Restriction itself. The land so restricted is generally left open except as specifically stated in the Conservation Restriction.

- A. The purpose of the restriction may include, but is not limited to, one or more of the following:
  - 1. to protect groundwater quality for drinking purposes
  - 2. to permanently protect open space
  - 3. to prevent filling of a floodplain or disturbance of wetlands
  - 4. to insure that land remains in farming, forestry, or outdoor recreation
  - 5. to protect marine water quality
  - 6. to preserve and protect a trail, shoreline, or beach
  - 7. to prevent the cutting of trees or forests
  - 8. to limit or prevent construction on land of natural resource value
  - 9. to preserve a scenic view, e.g., a "window to the sea"
  - 10. to add to existing protected open space which is contiguous to the land proposed to be restricted
  - 11. to meet the specific local planning or resource protection objectives of the Town, such as those found in the Open Space and Recreation Plan, the Pleasant Bay Resource Management Plan, the Stage Harbor Management Plan, or the Local Comprehensive Plan.

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<sup>3</sup> Division of Conservation Services, *The Massachusetts Conservation Handbook* (see attached List of Resources on Conservation Restrictions)

B. Additional values of permanently restricted land to the Town are:

1. The difference between the costs of potential municipal services against potential tax revenues. Studies have indicated that restricted land generates a substantial net savings to the Town in relation to lots developed for typical residential use;
2. The financial benefit to the Town of a voluntary gift of land to preserve land bank/community preservation acquisition funds, and/or to preserve land in perpetuity, which might not be affordable for purchase by the Town (e.g. waterfront property). For these reasons, every effort should be made to promote Conservation Restrictions in the Town.

### 3. BENEFITS TO THE LANDOWNER

The Owner will realize tax relief as a result of granting a Conservation Restriction on property. This tax relief may be reduced real estate taxes, income and estate (death) taxes. Real estate tax benefits are described in Section 6.

Conservation Restrictions may have inherent value to the Owner as well since he/she may thereby be able to maintain larger parcels of land intact. The integrity of land under perpetual restrictions is also maintained after death.

Conservation restrictions can assure landowners that their vision of protecting the property will be upheld over time by a credible stewardship entity, such as the town or local land trust.

### 4. PROHIBITIONS AND PERMITTED USES

A. *Section 31 of Chapter 184 of the Massachusetts General Laws* lists the following six categories of activities or uses that most Conservation Restrictions limit or modify:

1. No building, road, sign, outdoor advertising display, mobile home, utility pole or other temporary or permanent structure will be constructed, placed or permitted to remain on said parcel.
2. No soil, loam, peat, gravel, sand, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or unsightly or offensive material will be placed, stored or dumped thereon.
3. No loam, peat gavel, sand, rock or other mineral resource or natural deposit shall be excavated or removed from said parcel in such a manner as to affect the surface thereof.
4. No trees or other vegetation shall be cut or otherwise destroyed.
5. No surface use will be allowed except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition.
6. There shall be no activities detrimental to drainage, flood control, water quality, water conservation, erosion control or soil conservation.

Other additional prohibitions or limitations on other uses or activities (such as those listed in paragraph C below) may be negotiated between the Owner and the holder of the Conservation Restriction.

The Town is also willing to consider Conservation Restrictions which may not preserve significant land areas, but which are intended to preserve resources, such as scenic views and water quality, by voluntarily limiting the size of dwellings and other structures and accessory uses and landscaping near water bodies or historic areas.

- B. Separately from the list of prohibited activities and uses, the Owner may reserve the right to conduct or permit activities or uses (with or without the approval of the grantee) not inconsistent with the intent of the restriction, if specifically stated in the restriction document.
- C. Activities or Uses that may be Prohibited, Limited or Allowed.

The following is a list of allowable and prohibited uses. These examples are for illustration purposes only and are **general** in nature. Each Conservation Restriction request will be reviewed individually and specific uses will be determined during this review.

TYPICAL ALLOWED USES	TYPICAL PROHIBITED USES
<ul style="list-style-type: none"> <li>- hay harvesting including salt marsh hay</li> <li>- cutting of vegetation for scenic vistas and to prevent disease</li> <li>- private supply well</li> <li>- public access for passive recreation, nature study</li> <li>- approved agriculture and woodland management</li> <li>- establishment and/or maintenance of foot trails, including cutting of brush, slope stabilization and grading</li> <li>- improvements of existing structures</li> <li>- control of predators</li> <li>- boardwalks and stairs</li> <li>- signs to denote animal nesting areas, e.g. terns</li> <li>- means of access to contiguous non-restricted areas</li> </ul>	<ul style="list-style-type: none"> <li>- motor vehicle use, including snowmobiles, ATV's or ORV's</li> <li>- parking areas</li> <li>- hunting, trapping, fishing</li> <li>- dock, mooring or boating facility</li> <li>- mobile homes</li> <li>- pesticide use</li> <li>- grazing of domestic animals</li> <li>- alteration of natural watercourses, shores, marshes or other water bodies or water purity, water level and/or flow</li> <li>- subsurface sewage disposal systems</li> <li>- gardens for home consumption</li> <li>- mosquito control</li> </ul>

***Specificity in the restriction document prevents confusion later over what is and is not allowed on the parcel.***

## 5. SIZE REQUIREMENTS

Any size parcel shall be eligible to have a Conservation Restriction submitted for approval. The size of the parcel to be restricted will, however, be one of the factors considered by the Conservation Commission and Board of Selectman in determining whether a Conservation Restriction will be in the public interest or will provide significant public benefit. In any event, the size of the area on a parcel or the uses or dimensional standards proposed to be restricted should be sufficient to protect the resources that the Conservation Restriction is intended to preserve.

## 6. REASSESSMENT FORMULA

Properties encumbered by approved and recorded (or registered) Conservation Restrictions will be assessed for real estate tax purposes as follows:

First, the current fair market value of the parcel will be determined as if the parcel were not encumbered by or subject to the Conservation Restriction.

Second, generally, such unencumbered fair market value will be adjusted annually according to the following criteria:

- a) the characteristics of the land to be restricted (i.e., wetland, upland, buildable, etc.);
- b) the types and levels of uses extinguished or limited by the restriction;
- c) the types and levels of uses retained by the landowner in the parcel;
- d) provisions, if any, for public access to the parcel; and,
- e) the duration of the restriction (perpetuity or limited term).

For parcels on which dwellings or commercial buildings are located, if the Conservation Restriction covers the entire parcel, the structure(s) and the area satisfying the *current* minimum lot requirement will be assessed and taxed at the unencumbered fair market value (i.e. there will be no reduction in assessments or taxes for the structure(s) or other improvements or the minimum lot area, i.e., if a building envelope is reserved).

Structures or sites that are historically, architecturally or archeological significant may be eligible for preservation restrictions as defined in the second paragraph of *Section 31 of Chapter 184 of the Massachusetts General Law*.

All restricted properties must allow on-foot access to officials of the holder of the restriction in order to monitor compliance with the terms and conditions of the Conservation Restriction. In the case of the town as the holder of the Conservation Restriction, the Conservation Commission will be the monitoring agency.

Any land already subject to statutory agricultural or recreational abatements (G.L. Ch. 61, 61A, 61B) can be considered simultaneously eligible for a Conservation Restriction, though the property tax reduction associated with the Ch. 61, 61A, 61B programs will still apply. Landowners with these other abatements, however, may elect to replace their temporary reduction status with a permanent Conservation Restriction, in which case any reduction resulting from the Conservation Restriction will apply to assessment.

## 7. ASSESSMENT PERIOD COVERING CONSERVATION RESTRICTIONS

To receive tax benefits (if any), the landowner must record the Conservation Restriction by January 1<sup>st</sup> preceding the beginning of the fiscal year (e.g. restrictions recorded before January 1<sup>st</sup>, 2005 will receive tax benefits (if any) beginning in fiscal year 2006, which is July 1, 2005). It is not necessary for the landowner to apply for reduction yearly.

The landowner must furnish the Assessors with sufficient information to document the area and location of the land placed under restriction, including attested copies of all recorded documents and of the survey plan (if any) showing the precise area restricted.



**8. RELEASE OF CONSERVATION RESTRICTIONS**

In order for the community to make proper and accurate land use decisions for the future, it must be able to ensure that protected open space remains protected. For that reason, Conservation Restrictions are intended to be in effect in perpetuity. Only in cases of demonstrated extreme hardship or public necessity, and after a public hearing and public notice, will the Town consider releasing any restriction. The Town will follow established procedures including:

- two-thirds majority vote of the Conservation Commission (if the Town is the holder of the restriction)
- two-thirds majority vote of the Board of Selectmen, following advice from the Conservation Commission (for all restrictions); and,
- two-thirds majority vote of the Town Meeting.

Release procedures also require acquiescence by state officials:

- approval by the Secretary of Environmental Affairs, after review through the Massachusetts Environmental Policy Act; and,
- two-thirds majority vote by the Massachusetts General Court and signature by the Governor.

In considering release, the Town may impose financial penalties, including repayment of saved property taxes (if any) plus ten percent interest, or require other forms of compensation, such as the Owner's protection of an equivalent parcel of open space.

**8. EFFECTIVE DATE**

These policies shall go into effect upon vote or approval and signing by the Board of Selectmen, Board of Assessors and Conservation Commission and shall remain in effect until modified or rescinded by vote of these boards. The policies may be modified by the boards following a publicly-noticed meeting.

APPROVED:

DATE: May 19 2004

TOWN OF CHATHAM  
CONSERVATION COMMISSION

Cairne B. Town

Barbara S. Siffard

Wally J. Butler

Nathaniel T. Moson

Paul T. Chamber Li

\_\_\_\_\_  
\_\_\_\_\_

DATE: May 19 2004

TOWN OF CHATHAM  
BOARD OF ASSESSORS

Robt B. Town

Mike Town

AMM

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\_\_\_\_\_

## PRELIMINARY APPLICATION FOR CONSERVATION RESTRICTION

1. Name and mailing address of record owner(s) of property:

_____	_____
_____	_____
_____	_____

2. Street Address of property \_\_\_\_\_

Assessors' Map \_\_\_\_\_ Rte \_\_\_\_\_ Pcl \_\_\_\_\_

3. Size: Total acreage of parcel: \_\_\_\_\_ Upland acres: \_\_\_\_\_ Wetland acres: \_\_\_\_\_  
Total acreage of restricted land: \_\_\_\_\_ Upland restricted: \_\_\_\_\_ Wetland restricted: \_\_\_\_\_

4. Present full assessed value of the land \$ \_\_\_\_\_

5. Deed reference: Book \_\_\_\_\_ Page \_\_\_\_\_ or, Land Court Certificate: \_\_\_\_\_

Plan Reference (if any): Plan Book \_\_\_\_\_ Page \_\_\_\_\_ or, Land Court Plan: \_\_\_\_\_

6. Intended Holder of  
the Restriction:

- ☐ Town of Chatham Conservation Commission  
☐ Chatham Conservation Foundation, Inc.  
☐ Massachusetts Audubon Society  
☐ Orenda Wildlife Land Trust, Inc.  
☐ Other: \_\_\_\_\_

7. Name, address and telephone number of your attorney or representative:

\_\_\_\_\_

8. Signature of Owner(s) or agents:

_____	_____
_____	_____

This application, when complete, should be delivered to the Conservation Commission for consideration of the property's environmental or open space values. Within 30 days, the Conservation Commission will notify you or your agent if the land proposed for restriction is consistent with town conservation and planning goals.

If you need help completing this form, please contact the Conservation Commission at 508-945-5164.

**APPENDIX A. LOCAL PLANNING GOALS AND OBJECTIVES for  
OPEN SPACE AND RESOURCE PROTECTION, TOWN OF CHATHAM  
(some excerpts relevant for conservation restrictions)**

**I. LOCAL COMPREHENSIVE PLAN (approved by Town Meeting, May 2003)**

**1. Land Use:**

C. To preserve open space, the following steps are to be enacted:

2. The Town should establish and fund a master plan to acquire property to create and maintain open space. Private entities also should acquire property to preserve it as open space. Both entities should consider purchases, easements, leases or other legal means. (LU16)

Land shall be selected for acquisition by the town, through the Land Bank Committee, Community Preservation Trust Fund, or any other entity so created, if its purchase furthers the goals of this plan. Land meeting one or more of the following criteria shall be considered for purchase:

- a. Is contiguous with other preserved open space.
- b. Contains unprotected natural resources.
- c. Supports plant and wildlife habitat.
- d. Represents open space in highly visible locations, such as along major roadways.
- e. Provides a link for existing or potential walking or biking trails.
- f. Could provide public access to great ponds or other water bodies.
- g. Provides or expands public recreation opportunities, including scenic vistas.
- h. Has high development or redevelopment potential and is on a major roadway outside a neighborhood center.
- i. Would provide benefit to the general public rather than an individual neighborhood.
- j. Looks suitable for village greens within neighborhood centers.

**3. Natural Resources:**

5. Policy: Protect natural resources by acquiring or securing development rights to land for conservation in keeping with the Regional Policy Plan's goal of protecting at least 50% of the remaining developable land in Chatham.

Goal 3.1: Protecting the quality of our air and water resources:

Action A.1.c: Reduce the nitrogen load to impacted embayments or freshwater bodies through the purchase, or seek donation, of land. Target for public purchase lands on which development would adversely impact resources. (NR4).

Action B.4: Identifying and acquiring where possible lands which are contiguous with or provide connections between other conservation areas to preserve wildlife habitat and prevent further fragmentation of undeveloped areas. (NR38).

**II. STAGE HARBOR COMPREHENSIVE MANAGEMENT PLAN**

**G. Land Use and Visual Character**

Chatham's views and vistas serve to define its character. Views and vistas are provided both from the land and water in the Stage Harbor system. Publicly accessible views of the water are possible from several roads and the Oyster Pond Beach. Once on the water, boaters and swimmers view the land. The character of shorefront property is an important element in defining land vistas.

**Policies:**

Maintain and protect the town's open space resources around the harbor...and purchase additional lands whenever possible to increase public access and views of the Harbor system.

Preserve, acquire and encourage the enhancement of points where there are scenic views of the Harbor area.

Protect shorelines- Require a naturally vegetated buffer strip along shorelines to minimize surface runoff of contaminants from adjacent lands and encourage the maintenance and re-establishment of natural vegetation throughout the harbor study area.

III. PLEASANT BAY AREA OF CRITICAL ENVIRONMENTAL CONCERN MANAGEMENT PLAN, 1998

“Under current zoning, half of the land in the Bay’s watershed could be developed for residential use...Only four percent of land in the watershed is protected as open space and there is little regulatory provision for increasing the amount of protected land,” (p. 74).